No. 93-376

Supreme Court, U.S.
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In the

Supreme Court of the United States

October Term, 1993

KEY TRONIC CORPORATION,
Petitioner,

v.

UNITED STATES ET AL.,
Respondents.

STANTON ROAD ASSOCIATES,
Petitioner,

v.

LOHREY ENTERPRISES, INC.,
ELECTRONIC VALET SYSTEMS, INC.,
DAVID LOHREY AND NATHAN PANG,
Respondents.

SUPPLEMENT TO JOINT PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

James R. Moore
(Counsel of Record)
Benjamin S. Sharp
Mark W. Schneider
Kathryn L. Tucker
PERKINS COIE
1201 Third Avenue
Seattle, WA 98101-3099
(206) 583-8888

Steven L. Hock
James C. Collins
Bruce J. Berrol
THELEN, MARRIN,
JOHNSON & BRIDGES
Two Embarcadero Center
San Francisco, CA 94111
(415) 392-6320

Attorneys for Petitioners

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Petitioners Key Tronic Corporation and Stanton Road Associates respectfully file this Supplement to the Petition pursuant to Rule 15.7. In their Joint Petition, filed September 7, 1993, Petitioners asserted as a reason for granting a Writ of Certiorari to the Ninth Circuit, the intercircuit conflict caused by decisions of the Sixth and Eighth Circuits allowing attorney's fees under CERCLA and

by those of the First and Ninth Circuits disallowing them. The Tenth Circuit has held that some attorneys' fees may be recoverable as response costs, but that fees directly related to litigation are not recoverable.

After the Joint Petition was filed, a Petition for a Writ of Certiorari to the Sixth Circuit was filed in this Court under the name of *Livingstone v. Donahey and Bogle* (No. 93-428). The United States is not a respondent in *Livingstone*. Accordingly, under the rules of this Court, *Livingstone* will be brought to the Court's attention before the Joint Petition where the United States is a party granted an extension of time until November 8 to respond. For that reason, the subsequently filed petition will be brought to the Court's attention prior to the Joint Petition.

Joint petitioners Key Tronic Corporation and Stanton Road Associates respectfully suggest that if the Court is inclined to review the issue of the recoverability of attorneys' fees in CERCLA cost recovery and contribution actions, the Joint Petition is a far better vehicle for consideration of that issue.

1. The Joint Petition raises the single issue of attorneys' fees in Superfund cases; *Livingstone v. Donahey and Bogle* raises additional issues.

2. The Joint Petition presents two sets of facts: one where the United States is a contributing party from which response costs are sought; the other where Stanton Road Associates is an innocent plaintiff that did not contribute to the Superfund site contamination but seeks response costs from those who contaminated its property. *Livingstone* involves a dispute between two parties both of which contributed to contamination of the site.

3. The Joint Petition involves a claim for different types of attorneys' fees, and a factual record that allocates the amount of fees to the various functions for which recovery is sought as response costs. The *Livingstone* petition does not draw distinctions among the various types of attorneys' fees claimed as response costs.

The Joint Petition presents factual records that should enable the Court to resolve this intercircuit conflict in a fashion that reduces the likelihood that a subsumed or pretermitted issue will be left unaddressed and become the subject of one or more subsequent petitions.

For the foregoing reasons, Petitioners respectfully request that the Court hold the Petition in *Livingstone v. Donahey and Bogle* (No. 93-428) and grant the Joint Petition of Key Tronic Corporation and Stanton Road Associates.

RESPECTFULLY SUBMITTED, this 25th day of October, 1993.

James R. Moore
(Counsel of Record)
Benjamin S. Sharp
Mark W. Schneider
Kathryn L. Tucker
PERKINS COIE
1201 Third Avenue
Seattle, WA 98101-3099
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